Supreme Court, U.S.
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No. 00-1660

In the
Supreme Court of the United States

GABRIEL SEYMOUR and ROBERT REID,

Petitioners,

vs.

STATE OF CONNECTICUT ELECTIONS ENFORCEMENT COMMISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

PETITIONERS' REPLY BRIEF

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I

RESPONSE TO ATTORNEY GENERAL'S UNFOUNDED CLAIMS OF "MISSTATEMENTS" BY PETITIONERS

A. Superior Court's Acknowledgment of Constitutional Issues in Administrative Appeal

Supreme Court Rule 14(g)(i) requires that a petition contain "specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; *** so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari." The original petition complies with that rule at pages 8-10 and by setting forth the full text of the state court opinion in the appendix. *See Seymour v. Elections Enforcement Commission*, 255 Conn. 78, 80 *et seq.* (2000).

The respondent, at page 4 of its opposing brief, states:

> In their administrative appeal to the Connecticut Superior Court, the petitioners challenged the Commission's ruling on various state law grounds. (Pet. App. C at A-36). At no time during these proceedings, or during the prior proceedings before the Commission, did the petitioners claim that the disclosure requirement contained in Conn. Gen. Stat. §9-333w(a) violated the First Amendment.

While neither the Election Enforcement Commission, the State Attorney General nor the petitioners brought the *McIntyre* decision to the attention of the Superior Court and specifically discussed the question of its applicability to Conn. Gen. Stat. §9-333w(a), there were a number of explicit constitutional challenges to the EEC proceeding before the Superior Court, including violation of petitioners' First Amendment rights, as reflected in the following excerpts from the Superior Court's opinion (which is printed in full at pages A-34–A-40):

> The plaintiffs in their appeal essentially raise three claims all of a constitutional nature: (1) a challenge to the legislative control over the Commission's membership; (2) a challenge to the statutory authorization of disclosure of complaints of election law violations and (3) a challenge to the alleged selective application of the election laws to plaintiffs' press releases. (A-36)
>
> * * *
>
> The plaintiffs allege that pre-hearing publicity violated their constitutionally protected freedoms of speech and association, and their Fourteenth Amendment rights to due process of law. The crux of this claim is that complaints to the Commission resulted in a disclosure of political associations and unfavorable publicity concerning unsubstantiated charges. (A-38)
>
> * * *
>
> The plaintiffs also attack the applicability of §9-333w to the "press releases." The plaintiffs' claim that the exception of §9-333w(c) is applicable. This exception is clearly directed to the publisher not the candidate. The freedom of a newspaper to publish materials originating in a press release does not relate back to a candidate's obligation to include the "Paid for by" attribution on its materials. (A-40)

There can be no doubt that the EEC proceeding was under strong constitutional challenge by petitioners at the agency level (Petition, p. 9), at the Superior Court level (above), and at the Connecticut Supreme Court level, where respondent readily concedes that a full factual record of "compelling state interests" was made. (Petition, pp. 9-10; Resp. Br. p 8)

B. EEC-Assisted Adverse Publicity Against Petitioners During Election Campaign

The State Attorney General's assertion (at p. 6) that there is "absolutely no evidentiary support whatsoever" for various facts set forth in the petition is demonstrably false B and particularly disturbing since the EEC's Executive Director and General Counsel is named as co-counsel on the face of respondent's brief. Particularly noteworthy is the recklessness of the following statement:

> In particular, there is absolutely no support in the record for the petitioners' allegations that the complaints filed with the Commission were used as "major campaign strategic attack weapons" by political opponents, that the Commission improperly disclosed the complaints, that the complaints produced "intense adverse publicity" in the local press, *** (Resp. Br. at p. 6)

The *McGuire* complaint followed on the heels of an earlier EEC complaint against petitioners publicized at the height of the election campaign in the principal local newspapers circulated in the town where the 1997 municipal election was to take place. The first newspaper story appeared under the following headline on September 4, 1997:

GROUP ACCUSED
OF BREAKING
FINANCE LAWS

A simultaneous news story in a second local newspaper was headlined:

FALLS VILLAGE
COMMITTEE
INVESTIGATED

The latter story quoted *an EEC official* as stating that the first complaint was in the hands of a staff investigator.

That same news story also noted that at the 1997 Republican party caucus the petitioners and other reform candidates "swept way the party-endorsed slate. . . ."

After the *McGuire* complaint (the subject of this proceeding) was filed with the EEC shortly afterwards, a further story appeared in the local press on September 26, 1997, headlined:

2ND COMPLAINT ALLEGES
ELECTION LAWS VIOLATION

Once again, the news story reported *an EEC official* as stating that "both complaints are under investigation."

Contrary to respondent's claims, these newspaper articles *are all part of the Record on Appeal* [R 1 (Exs. XIII and XIV) of Certified Administrative Record on Appeal; R 36 (R.Ex. 10 *id.*)].

C. Facts Judicially Noticeable by the Court

The party make-up of the Elections Enforcement Commission is prescribed by statute (Conn. Gen. Stat. § 9-7(a)).

The factual description of Falls Village appearing on page 5 of the petition is published in the town's annual report.

The staffing of local boards of election by party loyalists is open and notorious.

None of these statements in the petition are "factual fabrications" as alleged by the State Attorney General (Resp. Br. p. 7) but are facts subject to judicial notice (FRE Rule 201(b)) and properly belong before this Court.

II

THE CONNECTICUT STATUTE IS UNCONSTITUTIONAL AS APPLIED AND ON ITS FACE. NO ADDITIONAL EVIDENCE IS REQUIRED BEYOND WHAT IS ALREADY IN THE RECORD

Respondent argues (Resp. Br. p. 8) that "there is no evidence in the record" supporting petitioners' claim that the statute is overbroad.

No evidence is necessary beyond the statute itself and its application to the facts of this case. The relevant facts of this case are well summarized in the minority opinion of the Connecticut Supreme Court at pages A-30–A-31. The words of Chief Judge Sullivan, after summarizing those facts, present the constitutional issue succinctly:

> In the words of the commission itself, this was a "technical violation" that, in ordinary English, translates into action that did not violate the substance of the election law.
>
> The commission endangers vigorous political debate by straining at a gnat. Were it not for the real threat to grass roots political movements with modest resources and their right to reach the public's ears, this case would be laughable.
>
> History teaches us that a stringent control of political debate on a minute formal point, without any relationship to the dangers of money controlling democratic government, presents a grave threat to our liberties. (A-31–A-32)

III

THE ELECTION COMMISSION VIOLATED PETITIONERS' DUE PROCESS RIGHTS BY ASSISTING IN PUBLICIZING ALLEGED ELECTION LAW VIOLATIONS BY PETITIONERS WHILE THE CONTESTED ELECTION CAMPAIGN WAS ONGOING, AND LEAVING THE CHARGES PENDING UNTIL AFTER THE ELECTION HAD TAKEN PLACE

In Point IV of its brief, respondent EEC argues (at p. 19) that petitioners' due process claim based on the Commission's participation in the publicizing of the *McGuire* complaint during the height of the hotly-contested 1997 election campaign, followed by its delay of any hearing until after Election Day when the damage was done, is a "post-hoc assertion that they were prejudiced." However, the plain fact is that the pendency of the unresolved EEC charges coincided with Petitioner Reid's defeat for election as Member of the Board of Selectmen while Petitioner Seymour was elected First Selectman by a razor-thin margin of 17 votes. The prejudice and injury is self-evident.

Having participated in generating harmful publicity during petitioners' campaign for public office, the Commission had a constitutional duty to provide them with a timely opportunity to clear their names. *Barry v. Barchi*, 443 U.S. 55, 66 (1979).

CONCLUSION

Nothing in respondent's brief alters the fact that the Connecticut Supreme Court's majority opinion in *Seymour v. EEC* improperly restricts this Court's decision in *McIntyre v. Ohio Elections Commission* to eliminate application of its First Amendment protection to contested candidate elections; and that the mandatory disclosure requirements of Connecticut's § 9-333w are much too broad; and that the EEC's conduct of this enforcement proceeding in a fashion to contribute to the actual defeat of petitioner Reid as a candidate for local public office clearly violated his due process rights.

Dated: New Haven, Connecticut
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